

PUBLIC UTILITIES COMMISSION

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September 26, 1997

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William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554Re: Further Notice of Proposed Rulemaking on Subscriber Carrier Selection
Changes, CC Docket 94-129

Dear Mr. Caton:

Enclosed you will find the original plus eleven copies of the **Reply Comments of the People of the State of California and of the Public Utilities Commission of the State of California** in response to the FCC's Further Notice of Proposed Rulemaking (FNPRM), released July 15, 1997. In accordance with ¶ 111 of the FNPRM, I also enclose a diskette containing California's Reply Comments in electronic form. If you have any questions, you may contact me at (415) 703-1319.

Sincerely,

Helen M. Mickiewicz
Principal Counsel
California Public Utilities Commission

HMM:jmc

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Implementation of the)
Subscriber Carrier Selection Changes)
Provisions of the Telecommunications)
Act of 1996 Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)
_____)

CC Docket No. 94-129

**REPLY COMMENTS OF THE PEOPLE OF THE STATE OF
CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA ON THE FURTHER NOTICE OF PROPOSED
RULEMAKING ON UNAUTHORIZED CHANGES OF CONSUMERS'
LONG DISTANCE CARRIERS**

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September 26, 1997

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I. INTRODUCTION

The People of the State of California and the Public Utilities Commission of the State of California (California or CPUC) submit these reply comments to the Federal Communications Commission (FCC or Commission) on the Further Notice of Proposed Rulemaking (FNPRM) regarding the Commission's proposed modifications to its rules regarding unauthorized transfer of customers from one telecommunications carrier to another, more commonly known as "slamming".¹ In reviewing the reply comments of other entities, several issues arose that the CPUC feels should be addressed or clarified. These reply comments are limited to those issues. Parties commented on myriad issues which California does not address here. The CPUC's silence should not be viewed as either support of or opposition to proposals which are not discussed in these reply comments.

II. JURISDICTION

The commenters who addressed the question of jurisdiction expressed divergent interpretations of the FCC's FNPRM. Some commenters assumed that the FCC has proposed to pre-empt state anti-slamming programs, whether or not those programs are inconsistent with the Commission's final rules. (Frontier, p. 2.)

¹ "Slamming" occurs when a telecommunications carrier fraudulently transfers a subscriber's service without the subscriber's consent.

Others advocated that the FCC pre-empt “all state laws and regulations which address subscriber selections for interstate services”, or pre-empt inconsistent state rules. (Cable and Wireless, p. 2 and Excel, p. 3, respectively.) Still other commenters staunchly asserted that the Commission should pre-empt all state substantive regulation of slamming, whether inconsistent or not, and whether such regulations apply to interstate or intrastate services. (Frontier, p. 8.)

Finally, some commenters joined California in assuming that the FCC has not indicated a clear intention to pre-empt or not to pre-empt state anti-slamming rules. (California, pp. 2-3; working Assets, pp. 1, 3.) California noted in its comments, and continues to believe, that the FCC has not explicitly stated its intent regarding the proposed extension of its anti-slamming rules to “all telecommunications carriers”. Nothing California has read in others’ comments persuades the CPUC that the FCC has made it “implicit . . . that it is prescribing uniform, nationwide rules from which the states are not permitted to deviate”. (Frontier, p. 2.) Nor is California now convinced that the 1996 Federal Telecommunications Act has reserved to the states only the right to enforce FCC procedures, as Frontier asserts. (Frontier, p. 10.)

California agrees with Working Assets that the appropriate course of action is for the FCC to “work with the individual states as it fashions regulations meant to apply to intrastate service changes”. (Working Assets, p. 1.) As Working Assets observes, “unless the FCC rules on carrier changes have the support of the

states individual states will render different rules of their own". (Id.) The CPUC has extensive experience with slamming. Serving telecommunications marketplaces among the largest and most desirable in the country, the CPUC continues to confront a slamming problem commensurate with the size and scope of California's markets. California believes Congress reserved to the states authority over intrastate slamming activity precisely so that they can effectively address this problem as it inevitably expands into the local exchange market.

At the same time, the CPUC is willing to work with the FCC to develop rules which can serve as a model for all states to apply to intrastate services, and which would apply in any state which does not adopt its own rules. California believes that this approach will create the level of consistency which the industry desires. Carriers operating in multiple states will know that certain activity is proscribed in every state, period. Yet states will retain the option to impose additional regulations where the FCC's rules have not proven sufficient to stem the slamming problem. California again urges the Commission to continue the flexible approach set forth in its 1995 order, in which the FCC declined to preempt state anti-slamming programs.²

² FCC 95-225, CC Docket 94-129, released June 14, 1995.

III. THIRD PARTY VERIFICATION (TPV)

A. TPV Applied to In-Bound Call PC Change Requests

In its reply comments, Southwestern Bell Telephone Company (SBC) takes the position that third party verification of in-bound calls to change PCs is both unnecessary and ineffective.³ Current California law requires TPV for all changes of telecommunications service providers for residential customers. The California statute contains one specific exemption: "a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers".⁴ Consequently, the SBC proposal is inconsistent with both California law and practice, and the CPUC must oppose it.

B. TPV Applied to All Local Providers, Not Just ILECs

Several commenters asserted that TPV of PC changes should be applied to all providers, not just local exchange carriers (LECs) and incumbent LECs (ILECs). For example, Bell Atlantic believes that all facilities-based providers should be subject to TPV requirements because facilities based providers are able

³ Comments of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell on Further Notice of Proposed Rulemaking (hereafter referred to collectively as "SBC"). CC Docket No. 94-129. Section III (C).

⁴ California P.U. § 2889.5 sec. 3 (D)

to submit and execute PC changes on behalf of a subscriber.⁵ Current California law requires TPV for any "telephone corporation"⁶; that is, ILECs and LECs, including both facilities-based providers and resellers. Because the potential for abuse is not restricted to ILECs and LECs, the FCC should make clear in its final rules that the rules will apply to all classes of telecommunications service providers.

C. PIC Changes By TPV Providers

In its comments, TPV Services, Inc. suggests that independent third-party verification entities should be permitted to submit PC changes (with all attendant liabilities, etc.). (TPV Services, pp. 8-13.) The CPUC strongly opposes any allowance for parties that are not telecommunications carriers to do PC or PIC changes. First, involvement in PC changes by TPV entities would make the process ridiculously cumbersome: in order to maintain the independent verification aspect of PC changes, any changes submitted by a TPV would then have to be verified by another, "fourth party verifier". Also, any ability to submit

⁵ "(T)he premise of the Notice's question – that only a LEC can be both a submitting and executing carrier for a PC change – is simply false. Any facilities-based interexchange carrier that permits resale of its services can be both a submitting carrier and an executing carrier. If a reseller is serving a long distance customer by reselling a facilities based carrier's interexchange services, the facilities based interexchange carrier could slam that customer by retaining the call detail records that it would ordinarily send to the reseller and using them to bill the customer itself. In this case, the facilities based interexchange carrier would have both submitted and executed the unauthorized PC change. There is therefore no basis for limiting LECs to verification by an independent, third party." Bell Atlantic Comments, CC Docket NO. 94-129, Section III.

⁶ California P.U. §2889.5 (a).

carrier changes, rather than simply verify the validity of any changes, would make TPV entities non-neutral participants in the process. Finally, the CPUC is extremely reluctant to allow access to subscribers' private information to an entity over which neither state commissions nor the FCC have clear jurisdiction. In other words, if a TPV entity misused subscriber information, or engaged in another form of abuse, neither the FCC nor state commission would have any direct authority over the offending entity.

IV. RESTITUTION: PROPOSAL THAT SUBSCRIBER SHOULD BE EXEMPT FROM CHARGES INCURRED WITHIN THE FIRST 90 DAYS

The public counsels in several states recommended that subscribers who have been slammed should not be required to pay, to any party, for service received up to 90 days after being slammed. As stated in its comments, California feels strongly that slammers should be vigorously prosecuted. However, the CPUC also believes that any circumstance which provides an incentive to either slam or to allege a slam should be eliminated. A circumstance in which slammed subscribers do not have to pay for a significant period of service creates an large incentive to allege a slam.

V. "THREE STRIKES" PROPOSAL

SBC proposes a "three strikes" program of fines and, after continued violations, eventual license suspension.⁷ A graduated enforcement program may be an intriguing concept, but the FCC should be aware that regulatory agencies' abilities to impose fines are often controlled by state and federal laws. Further, while graduated standards would alert potential violators of the penalties for misdeeds, they also could afford violators the opportunity to claim discriminatory treatment if an agency deviates in any way from such guidelines. Consequently, the CPUC urges the FCC to take further comments on this and other enforcement proposals prior to adopting an enforcement program.

In particular, the CPUC is concerned with SBC's proposal to have a series of fines "remitted to the appropriate regulatory agency".⁸ This suggests that either the FCC or a state commission would levy such escalating fines and as mentioned above state enforcement of fines would need to comport with state laws. California law, for example, caps the dollar amount the CPUC may levy in fines against violators, and requires the CPUC to seek "penalties", above and beyond "fines", in civil court.⁹ Thus, a program of graduated penalties may be

⁷ Section II.

⁸ Ibid.

⁹ California P.U. code § 2110, et seq.

appropriate from a policy perspective, it contains attendant potential practical limitations.

VI. CONCLUSION

As stated in its first round comments, California is greatly troubled by the increase in slamming, and favors augmentation of regulatory agencies' ability to prosecute violators. The CPUC found merit in some of the proposals offered by respondents, was enlightened by many of the clarifications, and appreciates the opportunity to comment on particulars.

Respectfully submitted,

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September 26, 1997

CERTIFICATE OF SERVICE

I, Helen M. Mickiewicz, hereby certify that on this 26th day of September 1997, a true and correct copy of the foregoing in **COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON UNAUTHORIZED CHANGES OF CONSUMERS' LONG DISTANCE CARRIERS**, was mailed first class, postage prepaid to all known parties of record.


HELEN M. MICKIEWICZ